

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JON CROSSLAND,

10 Plaintiff,

11 v.

12 WIDEORBIT, INC.,

13 Defendant.

CASE NO. C18-1422RSL

ORDER DENYING PLAINTIFF'S
MOTION TO AMEND

14 This matter comes before the Court on "Plaintiff's Motion for Reconsideration
15 and Leave to Amend the Complaint Pursuant to FRCP 15." Dkt. # 23.¹ On January 11,
16 2019, the Court dismissed plaintiff's retaliation claim in part because he had not alleged
17 that he had complained that his employer's decision to give the Canadian territory to
18 someone else was the result of age discrimination. Dkt. # 22 at 2. Plaintiff now seeks to
19 amend his complaint to add the following paragraph:

20 6. After Plaintiff was notified of the removal of his Canadian market,
21 Plaintiff met with Susie Hedrick, Defendant's Senior Vice President for
22 Sales, in March 2018 to contest this decision. Plaintiff felt that the
23 decision was related to his age. Plaintiff pointed out that the replacement
24 taking over his accounts is immature, much less experienced, and does not
have the same existing relationships with the Canadian clients. Hedrick
agreed that the decision is a mistake, but she explained that the decision

25 ¹ Despite the title, plaintiff is not arguing that the Court erred in its analysis of the
26 retaliation claim or that new law or evidence requires reconsideration.

ORDER DENYING PLAINTIFF'S
MOTION TO AMEND

1 was not hers to make.

2 Dkt. # 23-3 at 2-3.

3 Courts “should freely give leave [to amend] when justice so requires.” Fed. R.
4 Civ. P. 15(a)(2). There is a “strong policy in favor of allowing amendment” (Kaplan v.
5 Rose, 49 F.3d 1363, 1370 (9th Cir. 1994)), and “[c]ourts may decline to grant leave to
6 amend only if there is strong evidence of undue delay, bad faith or dilatory motive on
7 the part of the movant, repeated failure to cure deficiencies by amendments previously
8 allowed, undue prejudice to the opposing party by virtue of allowance of the
9 amendment, or futility of amendment, etc.” Sonoma County Ass’n of Retired Employees
10 v. Sonoma County, 708 F.3d 1109, 1117 (9th Cir. 2013) (internal quotation marks and
11 alterations omitted). Defendant argues that the proposed amendment would be futile
12 because it would be subject to immediate dismissal for failure to state a claim for relief.
13 The Court agrees.

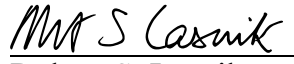
14 In order to withstand a motion to dismiss, the proposed complaint must include
15 factual allegations sufficiently stating a “plausible” ground for relief. Bell Atl. Corp. v.
16 Twombly, 550 U.S. 544, 570 (2007). Plaintiff alleges that he felt that he was deprived of
17 the Canadian territory because of his age, but his complaint to Hedrick made no
18 reference to his protected status or the age of his replacement. Criticizing the wisdom or
19 fairness of a particular decision or the qualifications of the chosen replacement are not
20 complaints of age discrimination. See Alonso v. Qwest Commc’ns Co., LLC, 178 Wn.
21 App. 734, 754 (2013) (“A general complaint about an employer’s unfair conduct does
22 not rise to the level of protected activity in a discrimination action under WLAD absent
23 some reference to the plaintiff’s protected status.”). For whatever reason, plaintiff opted
24 not to share his suspicion that he had been ousted because he was a 64 year old man and
25 instead chose to couch his complaints in terms of business concerns. Having avoided
26

ORDER DENYING PLAINTIFF’S
MOTION TO AMEND

1 protected activity, plaintiff cannot maintain a retaliation claim.

2
3 For all of the foregoing reasons, plaintiff's motion for leave to amend (Dkt. # 23)
4 is DENIED.

5
6 Dated this 15th day of March, 2019.

7 
8 Robert S. Lasnik
United States District Judge